

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT K. ADAMS,

Plaintiff,

v.

LARANCE, et al.,

Defendants.

CV F- 05-0488 REC DLB P

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

Plaintiff is a federal prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), which provides a remedy for violation of civil rights by federal actors. Pending before the Court is Plaintiff's complaint filed April 13, 2005. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C. § 1915(e)(2). If the court determines that the complaint fails to state a claim, leave to amend

may be granted to the extent that the deficiencies of the complaint can be cured by amendment.

Lopez v. Smith, 203 F.3d 1122 (9th Cir. 2000) (en banc).

Plaintiff names as defendants disciplinary hearing officer Larance; and unit disciplinary committee members Mayhem and Wells. Plaintiff claims that defendants violated his right to a fair and impartial disciplinary hearing by denying him a staff representative in violation of his constitutional rights. Plaintiff alleges that as a result he was convicted of a disciplinary violation causing him to be placed in administrative segregation for 60 days without credit for time already served; loss of commissary and telephone privileges and loss of good time credits.

Plaintiff's allegations fail to state a cognizable claim for relief under section 1983. Where, "success in a . . . [section] 1983 damages action would implicitly question the validity of conviction or duration of sentence, the litigant must first achieve favorable termination of his available state, or federal habeas, opportunities to challenge the underlying conviction or sentence." Muhammad v. Close, 540 U.S. 749, 751, 124 S.Ct. 1303, 1304 (2004) (citing to Heck v. Humphrey, 512 U.S. 477 (1994)); Edwards v. Balisok, 520 U.S. 641, 648 (1997) (applying Heck to a prison disciplinary hearing where good-time credits were affected). Because the loss of time credits affects the duration of plaintiff's sentence, a claim based on the deprivation of the credits is barred until such time as plaintiff invalidates the result of the disciplinary hearing.

The Court finds it necessary to dismiss the complaint in its entirety. The Court will grant plaintiff an opportunity to amend to cure the deficiencies of this complaint. Failure to cure the deficiencies will result in dismissal of this action without leave to amend.

If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

1 In addition, plaintiff is informed that the Court cannot refer to a prior pleading in order to
2 make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended
3 complaint be complete in itself without reference to any prior pleading. This is because, as a
4 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d
5 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer
6 serves any function in the case. Therefore, in an amended complaint, as in an original complaint,
7 each claim and the involvement of each defendant must be sufficiently alleged.

8 In accordance with the above, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's complaint is dismissed;
- 10 2. The Clerk's Office shall send plaintiff a complaint form; and
- 11 3. Plaintiff is granted thirty days from the date of service of this order to file an
12 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of
13 Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the docket
14 number assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original
15 and two copies of the amended complaint; failure to file an amended complaint in accordance with
16 this order will result in dismissal of this action for failure to state a claim and failure to comply with
17 the court's order.

18 IT IS SO ORDERED.

19 **Dated: November 4, 2005**
20 3b142a

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE